

## Summaries of NHDES-related Environmental Legislation Adopted in the 2004 New Hampshire Legislative Session

### HOUSE AND SENATE BILLS

**HB 230**  
Ch. 180  
Eff. 6/1/04

*establishing a committee to study how to improve the processes of the joint legislative committee on administrative rules and making certain revisions to RSA 541-A, the Administrative Procedure Act.*

- Establishes a committee to study how to improve the processes of the JLCAR; requires the committee to consider: developing processes to record a clear statement of legislative intent on every bill sent out of a house or senate committee OTP (with or without amendment) and to ensure that the JLCAR receives input from appropriate policy committees; adopting methods to provide for an expedited rulemaking process to adopt rule changes with minimal impact; expanding the membership of the JLCAR and establishing subcommittees of the committee; developing a training program for new JLCAR members and an educational program on rules for all house members; methods for ensuring uniformity in granting rulemaking authority and avoiding over-broad rulemaking authority provisions; revising RSA 541-A relative to fiscal impact statement requirements; the processes for rulemaking employed by the agencies that are exempt from the provisions of RSA 541-A and the effectiveness of this approach towards rulemaking; revisions to the drafting and procedure manual; revising RSA 541-A to permit the electronic filing of documents at various stages of the rulemaking process; and such other related issues as the committee deems appropriate.
- Amends RSA 541-A:13, V(a) to allow more time for an agency to respond to a conditional approval (30 days instead of 14).
- Establishes an expedited process for repealing certain rules.
- Authorizes the Director of OLS, after consultation with the Chair and Vice Chair of JLCAR, to waive any deadline contained in any provision of RSA 541-A “for good cause shown.”
- DES has already requested and received a waiver of the deadline for filing a final proposal.
- DES may be asked to provide information to the study committee.

**HB 516**  
Ch. 2  
Eff. 3/5/04

*relative to the standard of review for requests for excavating and dredging permits, relative to an appropriation for the expansion of the Port of Portsmouth, and relative to additional powers and duties of the Pease development authority.*

- Provides that, for appeals of wetlands decisions involving NHDOT projects to the Wetlands Council and Superior Court, there shall be a rebuttable presumption that there is public need for the requested project, and that DOT has exercised appropriate engineering judgment in the project’s design.
- Eliminates a contingency on an appropriation for the dredging of Hampton-Seabrook harbor.
- Grants authority for the Pease development authority to enter into an agreement with the Department of Army concerning the Shoreline Erosion Control Demonstration Project.
- Eliminates the bureau of marine services.
- No requirements for DES.

**HB 761**  
Ch. 71

*enabling municipalities to adopt subdivision and site plan review regulations that require innovative land use controls on certain lands when supported by the*

- Eff. 7/7/04 *master plan, making a change in an innovative land use control, and relative to the preliminary review of subdivisions.*
- Adds density rights to innovative land use controls.
  - Enables municipalities to require innovative land use controls on certain lands, when supported by the master plan.
  - Gives planning boards the power to require preliminary subdivision review.
  - Removes an applicant's option to forego a pre-application review when such review is required by subdivision regulations.
  - No requirements for DES.
- HB 803-FN** *relative to the establishment of municipal economic development and revitalization districts by municipalities.*  
Ch. 181  
Eff. 7/31/04
- Changes the limitations for municipalities that may create a municipal economic development and revitalization district under RSA 162-K.
  - No requirements for DES.
- HB 1131** *establishing a committee to study exotic aquatic weeds and species.*  
Ch. 115  
Eff. 5/17/04
- Establishes a statutory committee to study exotic aquatic weeds and species in the state of New Hampshire.
  - It's anticipated that DES will be asked to provide information and assistance to the committee.
  - Committee report due November 1 of each year.
- HB 1136** *relative to homeowner exemptions from certain environmental permitting, relative to certification as a wetland scientist, and making certain technical corrections.*  
Ch. 116  
Eff. 5/17/04
- Exempts homeowners from certain environmental permitting, and establishes detailed qualifications to be certified as a wetlands scientist.
  - Requires DES to recognize an exemption from the dredge and fill permitting requirements for a two-year period.
  - Corrects certain statutory references.
  - No impact on DES.
- HB 1141** *relative to dioxin emissions reduction and medical waste incinerators.*  
Ch. 13  
Eff. 6/4/04
- Provides additional definitions concerning dioxin emission reductions.
  - Prohibits construction of new medical waste incinerators, and prohibits operation of existing medical waste incinerators effective January 1, 2014.
  - The environmental impact is a reduction of overall dioxin emissions from a significant source industry.
  - No requirements for DES.
- HB 1148** *defining a wetland for the purpose of fill and dredge in wetlands and for local land use planning, relative to the wetlands council appeal process, relative to Smith Pond in Enfield, and relative to site plan review of certain trails.*  
Ch. 243  
Eff. §5 6/15/04

§2 7/1/05

§6 12/31/05

Remainder 7/1/04

- Defines “wetlands” for purposes of RSA 482-A, fill and dredge in wetlands, and for local land use planning and regulation.
- Establishes a criterion for timely filing of an appeal to the wetlands council.
- Authorizes DES to undertake repairs to the dam and dikes impounding Smith Pond, Enfield to the extent that funding for such work is available from outside the department. DES shall first obtain consent from the dam management review committee.
- Exempts trails for snow traveling vehicles from site plan review by a planning board.
- No financial impact on DES.

**HB 1160**

Ch. 15

Eff. 6/4/04

*relative to the membership of the board of professional geologists.*

- Amends RSA 21-O:12, II to include the State Geologist as a voting member of the Board of Professional Geologists.
- Amends the Board’s statute to define the term and membership criteria of the State Geologist.

**HB 1262**

Ch. 208

Eff. 6/11/04

*establishing a commission to study ways to encourage municipal recycling efforts and to study the tax exemption for water and air pollution control facilities.*

- Establishes a commission to study ways to encourage municipal recycling efforts and to study the tax exemption for water and air pollution control facilities under RSA 72:12-a.
- It’s anticipated that DES will be asked to provide information and assistance to the commission.
- Commission report due November 30, 2004.

**HB 1293**

Ch. 245

Eff. §3 & 5 8/14/04

§6 7/1/06

Remainder 6/15/04

*relative to emission control equipment for certain vehicles and relative to unfair motor vehicle insurance trade practices.*

- Modifies the exemptions from the emission control equipment requirements for motor vehicles.
- Essentially has an insignificant environmental impact as it exempts a very small portion of the fleet from inspection requirements.
- Department of Safety is the implementing agency for the rules related to this legislation. No requirements for DES.

**HB 1295**

Ch. 246

Eff. 8/14/04

*relative to certain court records exempting certain documents from the right-to-know law.*

- In any action against a governmental unit (including the State) where the governmental unit has agreed to a settlement of such action, the complete terms of the settlement and the decree of the court judgment shall be available as a matter of public record pursuant to RSA 91-A (except that the court may redact the names of minor children or any other person the court determines to be entitled to privacy).
- Notes or other materials made for personal use that do not have an official purpose are now exempt from the right-to-know law.

- Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to “a quorum or a majority” are now exempt from the right-to-know law.
- May affect how files are reviewed prior to release in response to Right-to-Know requests.

**HB 1308**

Ch. 82

Eff. 7/1/04

*relative to lobbying activities by state employees.*

- Clarifies that state employees are not required to register as lobbyists under RSA 15:1.
- Requires state employees to wear their employee identification badges when appearing in their official capacity before any legislative meeting or hearing for the purpose of promoting or opposing directly or indirectly any legislation pending or proposed before the Legislature.
- DES employees will have to wear their ID badge when testifying before the Legislature on behalf of DES.

**HB 1403**

Ch. 20

Eff. 4/5/04

*extending the reporting dates of certain study committees.*

- Extends the due date for several legislative studies, including a report from the diesel exhaust study committee. DES participated in the work sessions but was not asked to prepare any part of the report to be filed by the committee.
- No requirements for DES.

**SB 19**

Ch. 101

Eff. 5/17/04

*relative to notification of groundwater contamination and requiring a certain report from DES.*

- Puts into law many of the requirements established by Exec. Order 2002-04, issued by Gov. Shaheen in 2002.
- Requires notification of abutters to properties with wells that have a documented contamination level exceeding drinking water standards.
- No significant environmental impact.
- Specific requirements for DES are:
  - Provide notification of the presence of groundwater contamination to:
    - Owners of all property that contain a water supply well where the property (not the well) is within 500 feet of the well where the contamination is discovered.
    - Public water suppliers when the contaminated well is within the wellhead protection area of the public water supply.
    - Health officer of any municipality which contains property being notified.
- Notification shall be made in writing within 45 days of receiving the analytical data.
- Provide notification to the same parties listed above once the extent of the contamination is determined.
- Provide notification to the same parties listed above once the contamination has been remediated.
- Provide a report to the legislature by July 1, 2004 discussing the status of the Department's request to EPA to opt out of the RFG program.

**SB 312-FN***establishing a state code of ethics.*

Ch. 214  
Eff. 1/1/05

- Establishes a code of ethics for executive branch employees and officials, including restrictions on conflict of interest, misuse of position, acceptance/giving of gifts, and on employment for former public officials (no lobbying on certain bills for six months after leaving office/employment with the State).
- A benefit of the bill is that it finally defines what a prohibited gift is (“any money or thing of value received in excess of \$50 or in excess of \$250 in aggregate from any single source during any calendar year”). “Gift” does not include “meals and beverages consumed in the course of official business; ceremonial gifts or awards which have insignificant monetary value; unsolicited gifts of nominal value or trivial items of informational value; reasonable expenses for food, travel, and lodging for an in-state meeting at which the elected official or public employee participates in a panel or a speaking engagement; gifts of tickets or free admission extended to an elected official to attend charitable or political events, if the purpose of such gift or admission is a courtesy customarily extended to the office; gifts that are purely private and personal in nature; or gifts from relatives by blood or marriage, or a member of the same household.”
- The legislation allows agencies to adopt a supplemental ethics code. As applied to classified employees, any ethics code must be interpreted to be consistent with the provisions of the classified employees’ collective bargaining agreement.
- All agency heads and any public official designated by the agency head due to the responsibilities of the position will be required to file a financial disclosure statement.
- All DES employees and officials (Senior Leadership) will be subject to the code.

**SB 342-FN**  
Ch. 148  
Eff. 1/1/05

*relative to payment of utility assessments, relative to regulation of electric generation companies, and relative to violations of gas pipeline and liquefied petroleum gas system regulation.*

- This was not a bill that impacts DES. DES was only following this bill because of its association with electricity deregulation and because the power generation sector represents a significant portion of air permitting activities.
- The PUC is the implementing agency for the rules related to this legislation. No requirements for DES.

**SB 377**  
Ch. 122  
Eff. 5/17/04

*relative to damage to land by certain recreational uses.*

- Limits liability of landowners who allow OHRVs to use their property, when OHRV operators fill or dredge a wetland without a permit.
- No requirements for DES.

**SB 380**  
Ch. 106  
Eff. 7/16/04

*establishing a state wide incident command system.*

- Establishes a statewide incident command system, based on the model of the National Interagency Incident Management System, to respond to natural or man-made emergencies.
- DES, as a member of the NH Preparedness and Security Committee, will participate in this system and fulfill its assigned emergency support functions in the new State Emergency Response Plan.
- DES’s first responders will use this incident response system when natural or man-made emergencies occur that could potentially impact public health or the environ-

ment.

**SB 397**

Ch. 175

Eff. 5/27/04

*requiring DES to adopt certain rules and to eliminate certain substances from gasoline supplies.*

- Requires DES to adopt certain rules regarding the content of consumer products and to eliminate MtBE, other gasoline ethers, and tertiary butyl alcohol (TBA) from gasoline supplies. Gasoline containing MtBE, other gasoline ethers and/or TBA above 0.5 percent by volume would be prohibited from sale in the state. The prohibition would take effect on January 1, 2007 or six months after EPA approval of the state implementation plan to opt out of the federal RFG program, whichever date is later.
- The major environmental impact (when and if the ban goes into effect) would be the effective elimination of MtBE and other ethers from gasoline. The effect of this on the state's groundwater and drinking water supplies would likely be felt within one to two years of the ban. We could expect a gradual decline over several years in the number of public water supplies affected by MtBE and other ethers. Concentrations of these contaminants in water supplies, both public and private, would drop, with the near elimination of these contaminants with time.
- Specific requirements for DES are:
  - Commence rulemaking based upon model rules of the Ozone Transport Commission for the manufacture, use, or sale of certain consumer products.
  - Seek federal approval for revision to the State Implementation Plan to opt out of the federal RFG program or to substitute the consumer products rules for the State's Oxygen Flexible Reformulated Gasoline rule.
  - Enforce the ban on gasoline ethers and TBA once the ban goes into effect.
- Report to the legislature annually, beginning on November 1, 2004 through November 1, 2008, on the status of instituting the requirements of the bill, as listed above.

**SB 412**

Ch. 57

Eff. 7/2/04

*extending a public trust grant for the Gunstock Area ski resort's snowmaking.*

- Extends by 15 years the date by which Gunstock Area must commence water withdrawals in order to avoid the expiration of the authorization to take water from Lake Winnepesaukee for ski area operations.
- No requirements for DES.

**SB 413-FN**

Ch. 220

Eff. 6/11/04

*establishing a commission to study the construction time frame and financing for the expansion of I-93.*

- Establishes a commission to study the construction time frame and financing for the I-93 expansion project, and report its findings on or before November 1, 2004.
- No requirements for DES.

**SB 414-FN**

Ch. 199

Eff. S2 6/1/05

Remainder 6/7/04

*clarifying the laws relative to municipal impact fees, off-site exactions, vesting of development rights, and waiver of subdivision regulations.*

- Clarifies the authority of municipalities to adopt impact fees; clarifies the authority of municipal planning boards to impose exactions for off-site impacts.
- Clarifies how the rights of property owners may vest.

**SB 432-FN**

*establishing a division of emergency services, communications, and management, a*

Ch. 171  
Eff. 7/24/04

*division of fire standards and training and emergency medical services, and a division of fire safety in the department of safety.*

- Establishes a division of emergency services, communications, and management within the department of safety.
- Combines the division of fire standards and training and the division of emergency medical services.
- In the event of natural or man-made disasters, DES will now work in conjunction with the new division to coordinate an appropriate first response and follow-up.
- DES is a member of the NH Advisory Council on Emergency Preparedness and Security, of which the new divisions are also members.
- Section 171:20 of the bill amends RSA 485:40 (NH Safe Drinking Water Act/Emergency Planning/Reference Change) and requires that plans for emergency conditions and situations that may endanger the public health or welfare by contamination of drinking water be prepared by the new division.

**SB 449**  
Ch. 225  
Eff. 7/1/04

*relative to fluoridation of municipally-owned public water systems.*

- Establishes a procedure for voting on the introduction of fluoride into public water supplies that serve multiple municipalities.
- Permits the introduction of fluoride into public water supplies that serve multiple municipalities if the voters of the municipalities vote to approve its use.
- Provides that public water supplies that serve multiple municipalities and that are currently using fluoride may continue to do so until all of the municipalities have the opportunity to vote on the use of fluoride.
- Creates a procedure for a vote in the September 2004 state primary election on the use of fluoride in the municipalities served by the city of Manchester, water works department.

**SB 467**  
Ch. 95  
Eff. 7/10/04

*establishing an exemption from the public sewer connection requirements for two projects in the town of Derry.*

- Exempts properties within 125 feet of two new sewer lines in the town of Derry from the public sewer requirements as long as they comply with state and local regulations.
- No requirements for DES.

**SB 481-FN**  
Ch. 258  
Eff. 8/15/04

*establishing a sewer and other water-related purposes district for Great Bay.*

- Establishes the Estuary Alliance for Sewage Treatment (EAST), for the purpose of developing joint public wastewater collection, treatment, and discharge systems for the disposal of treated wastewater, and for other water-related purposes, for municipalities in the Great Bay estuary and related area.
- Requires EAST to obtain legislative approval for construction of a regional outfall sewer pipe.
- This legislation names the commissioner of DES, or designee, as a member of the EAST Board of Directors.
- Directs DES to review and approve or disapprove all reports, designs, plans and other engineering documents required to apply for federal grants-in-aid or grants-in-aid from the state.

**SB 487** *relative to lead sinkers.*

Ch. 172

Eff. §2 1/1/06; remainder 1/1/05

- Prohibits a person from using a lead sinker or jig while fresh water fishing; previously, use was prohibited only in fresh water ponds and lakes.
- Also prohibits the sale of lead sinkers and jigs.
- The environmental impact is protection of habitat and a reduction of lead-related deaths of loons and other waterfowl feeding in state's waters.
- No requirements for DES.

**SB 488** *establishing a committee to study the effects of electric utility restructuring on state dams and the alternatives for the operation and maintenance of state-owned dams.*

Ch. 121

Eff. 5/17/04

- Establishes a legislative committee to study the effects that electric utility restructuring has had on the state's hydro-lease program and the state dam maintenance fund and to study alternatives for funding the operation and maintenance of state-owned dams.
- It's anticipated that DES will be asked to provide information and assistance to the committee.
- Committee report due December 1, 2004.

**SB 534-FN** *relative to the reorganization of certain functions and duties of state agencies.*

Ch. 257

Eff. 6/1/04; multiple effective dates.

- Transfers the bureau of environmental and occupational health from the department of health and human services to the department of environmental services.
- Authorizes the commissioner of the department of environmental services to nominate the Air Resources, Water and Waste Management Division directors.
- Transfers certain programs from the office of state planning and energy programs to the department of environmental services and changes the name of the office of state planning and energy programs to the office of energy and planning.
- Requires a review of the salaries of the commissioner and assistant commissioner of the department of environmental services.